LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
APR 13 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1964

No. 901

JOEY GOLD and NEW YORK TICKET BROKERS, INC., on behalf of itself and its members,

Appellants,

v.

JOSEPH C. DiCARLO, as Commissioner of Licenses of the City of New York, and LOUIS J. LEFKOWITZ, as Attorney-General of the State of New York,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANTS' MEMORANDUM IN OPPOSITION TO MOTIONS TO DISMISS OR AFFIRM

JESSE MOSS,
Counsel for Appellants,
No. 420 Madison Avenue,
New York 17, N. Y.

LODER APPEAL PRESS, INC., 41 VESEY STREET, NEW YORK, N. Y. WOrth-2-0689

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 901

JOEY GOLD and NEW YORK TICKET BROKERS, INC., on behalf of itself and its members,

Appellants,

v.

JOSEPH C. DiCARLO, as Commissioner of Licenses of the City of New York, and LOUIS J. LEFKOWITZ, as Attorney-General of the State of New York,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANTS' MEMORANDUM IN OPPOSITION TO MOTIONS TO DISMISS OR AFFIRM

This memorandum is devoted to the arguments advanced by defendant-appellees on the question of whether the statute here under attack meets the constitutional test of reasonableness, *i.e.*, whether its provisions are reasonably related to the accomplishment of the stated legislative objective. We believe that those arguments miss the point.

They urge that the right to enact legislation controlling the resale prices of tickets of admission is within the power of the legislature. We do not deny that this may be so.

They further urge that the legislature is not required to legislate with respect to every area of a field, but may choose selected areas in which to legislate. We believe that this is true and we in no way dispute it.

The point is that these arguments are not relevant. That the executory provisions of a statute would be reasonable and appropriate to the accomplishment of some other legislative objective which might be within the power of the legislature to enact (but which it chose not to enact), does not enable them to survive the test of whether they bear such a reasonable and useful relationship to the stated objective of the statute which the legislature actually did enact.

The Legislature of the State of New York could have decided that the difficulties in theatre ticket distribution in New York could be cured by legislation which had as its objective, control of the fees charged by ticket brokers. It clearly chose not to do so. It selected another remedy. It decided instead that the objective of its legislation was to control the ultimate price paid by the purchaser of the ticket. That is the objective against which the means provided for in the statute must be measured, in order to determine whether they are reasonably designed to accomplish the purpose.

The only expert testimony available; namely, the finding of the Office of Price Stabilization, referred to in the Jurisdictional Statement, holds that the means here chosen are not reasonably and adequately related to the objective; namely, control of the ultimate price paid by the purchaser.

This we believe, is the point which the arguments in support of the motion to dismiss fail to comprehend and it follows that there is a substantial issue to be considered.

Dated: New York, New York, April 8, 1965.

Respectfully submitted,

JESSE MOSS,
Counsel for Appellants,
No. 420 Madison Avenue,
New York 17, N. Y.